

1 ordinance if you would like.

2 A If you tell me where it is I'll --

3 Q It's Article 28. And I'm going to mark,
4 for purposes of reference I'm going to mark the
5 excerpt as 18.

6 (Document was marked for identification as
7 Plaintiff's Exhibit No. 18.)

8 Q (BY MS. JONES) At some point the City
9 alleges that it could impose conditions of zoning
10 that would vary the required zoning set out in
11 Article 18. Is that, is that this, is Article 28
12 what the City is using to, referring to?

13 MS. HENDERSON: I'm going to object to
14 form. I don't know what you mean by required
15 zoning.

16 MS. JONES: Under Article 18 they
17 required, the required parking.

18 MS. HENDERSON: Oh, you're talking about
19 parking, okay. I heard required zoning.
20 That's why I --

21 MS. JONES: I'm sorry.

22 MS. HENDERSON: -- didn't understand the
23 question.

24 MS. JONES: No.

25 Q (BY MS. JONES) The required parking as, as

1 set out in Article 18, it is my understanding that
2 the City has alleged that they can use Article 28 to
3 vary those requirements set out --

4 A No, I don't think --

5 Q -- in Article 18.

6 A -- I said vary.

7 Q Okay.

8 A I think I said impose conditions because
9 the, the quote that I read into the record at the
10 planning commission is "In approving any rezoning
11 petition and/or use permit request, the city council
12 shall impose conditions of approval as deemed
13 necessary and appropriate to mitigate potentially
14 adverse influences or otherwise promote the public
15 health, safety, or general welfare."

16 Q And as it specifically refers to this
17 case, are you saying that the City can, cannot apply
18 Article 18's requirement for churches' parking and
19 instead impose its own conditions?

20 A No. I said, what I am saying is that if
21 the request causes impacts, then the City may impose
22 mitigating conditions.

23 Q And those mitigating conditions may vary
24 the requirement of parking set out in section,
25 Article 18; is that correct?

1 MS. HENDERSON: Let me object to the form.
2 You can answer to the extent you can.

3 THE WITNESS: It meant that, that in
4 reviewing the application if the content of the
5 application leads us to believe that the
6 studies that, that underlie Article 18 are
7 inconsistent with the proposed use, then this,
8 then the City may impose additional conditions
9 to address the impacts of the proposed use.

10 Q (BY MS. JONES) And would you please tell
11 me in what manner the proposed use of the Church of
12 Scientology building is in conflict with the use as
13 set out in Article 18?

14 MS. HENDERSON: For what?

15 MS. JONES: For parking.

16 Q (BY MS. JONES) It's a church. How is, how
17 is this church in conflict with Article 18's
18 examples of types of use and minimum requirements?

19 A I'm not suggesting that it is in conflict.
20 I am suggesting that it does not fully reflect the,
21 the, what we were addressing. So let me walk
22 through the logic of what, why I am suggesting this,
23 because it may be helpful.

24 The definition of a church in the zoning
25 ordinance is a facility in which persons regularly

1 assemble for religious ceremonies. The studies that
2 have been done on churches and examining other
3 churches that have been before us, we find that the,
4 the place of public assembly is a, is a proportion
5 of the total square footage on the site, probably is
6 in the 30 to 40 percent range of the total because
7 there are a lot of accessory uses that go with
8 churches that are, that are part of what was
9 measured.

10 In this case the proposed place of public
11 assembly is 3 percent of the total square footage of
12 the facility. And in examining that, it appears
13 that the predominant use is, in the building is not
14 assembly, and that was indicated by the applicant's
15 representative at the community developer resolution
16 meeting where he indicated that this facility does
17 not operate as many churches do. And it is not to
18 suggest that this isn't a place, a, a religious
19 location but rather that the assembly portion of the
20 definition was not the major use on the property.

21 And, therefore, based on that, the staff
22 felt that there were, that there were, needed to be
23 an effort to mitigate the impact of a minimal
24 parking requirement on a building of 43,000 square
25 feet where the number of parking spaces was either

1 41 or 47 under the calculation. I can't remember
2 which it is.

3 Q Can you tell me where in the zoning
4 ordinance it uses the word predominant use for an
5 assembly?

6 A It says assembly, place of assembly. That
7 is the definition. And in this building 3 percent
8 of the building is devoted to that place of
9 assembly.

10 Q I'm not arguing with that. What I want to
11 know is where can we point to in the zoning
12 ordinance that says the place of assembly has to be
13 any percentage?

14 A If the zoning ordinance leaves to the
15 director the ability to interpret the ordinance and
16 predominant would be the, the key based on the
17 standards of most religious facilities, predominant
18 would then go to the, to the dictionary for, for
19 definition.

20 Q But predominant is not in the zoning
21 ordinance. Predominant is a word that you have
22 interposed into the analysis.

23 A It is not --

24 MS. HENDERSON: Objection to form.

25 THE WITNESS: Predominant is, is an

1 indication that the largest use, single use on
2 most churches is the place of assembly. And in
3 this case it is very minor. And so by
4 measuring only the place of assembly, there is
5 a much larger portion of the building which is
6 unaccounted for which has activities that draw
7 people.

8 Q (BY MS. JONES) Let me just make it real
9 plain so we have a simple sentence. Do you find the
10 word predominant as applied to the minimum
11 requirements for churches and other places of
12 worship expressly mentioned in the zoning ordinance?

13 A No.

14 Q Do you find any place in the zoning
15 ordinance that fixes a percentage of usage in the
16 largest assembly area of a church facility?

17 A No.

18 Q Well, we're still on your City's
19 interrogatory response to Interrogatory No. 14 and
20 the statement is that the property is not served by
21 suitable transit. Is the property on the MARTA
22 line?

23 A It is.

24 Q Where's the bus stop?

25 A It's, I'm not sure if it's directly in

1 front of the building, but it's close.

2 Q You say it is not anticipated that members
3 of the church will take the bus in significant
4 numbers based on traffic patterns at the existing
5 Dunwoody location. Could you point me to the
6 traffic, the, where you got the information about
7 the traffic patterns at the existing Dunwoody
8 location?

9 A The traffic patterns as opposed to the
10 parking patterns?

11 Q Well, it just says based on traffic
12 patterns at the existing Dunwoody location. So
13 traffic is the word.

14 A Well, the, the, okay. It probably should
15 have been parking patterns because the current
16 facility is, has significant parking issues with it
17 and, which is the reason there are, one of the
18 reasons that they were looking for an alternate
19 location obviously because they expect to expand the
20 facility, and we certainly encourage that. But
21 that, the MARTA bus goes past only every 15 minutes
22 past this location, and there is no other transit
23 that serves it.

24 Q But a MARTA bus does go every 15 minutes?

25 A It does, uh-huh.

1 Q And who told you there were parking
2 problems at Dunwoody?

3 A I believe we observed them and have some
4 photographs of, of parking issues at the Dunwoody
5 location.

6 Q Who made the photographs?

7 A I believe that one of our staff members
8 did, but I'm not sure whether it was the planner or
9 if we sent a, an officer over to do that.

10 Q Do you know whether or not those
11 photographs have been provided to the church, or to
12 the plaintiff?

13 A I'm not sure.

14 Q Do you know the name of the staff member
15 who took the photos?

16 A No, I don't.

17 Q Where would the photos be kept?

18 A Well, that's what I'll have to check. I,
19 since I don't know who took them, I don't know where
20 they're kept.

21 Q Were they placed in the zoning record?

22 A It would have, I believe that it -- I
23 don't know. I don't think so, but I'm not sure.
24 But we can check it.

25 Q How many members of the Dunwoody church

1 take the bus?

2 A That I don't know.

3 Q How is the street location or the location
4 of the Dunwoody church similar to the location of
5 the Roswell Road church? In terms of traffic flow.

6 A I'm not sure that I know personally how
7 that, what the traffic flow is past the facility.

8 Q Do you know what the traffic flow is past
9 the Dunwoody church?

10 A That's what I'm saying, I don't know.

11 Q Do you know what the traffic flow is past
12 the Roswell Road church?

13 A I believe that the traffic engineer
14 indicated that we had something like 50,000 trips
15 per day, but I'm doing that from memory.

16 Q Were you able to anticipate that members
17 of the Roswell Road church will take the bus in
18 significant numbers?

19 A I don't believe there is any church in
20 Sandy Springs that currently has a predominant
21 membership, a membership which predominantly takes
22 the bus, even those which are located on bus lines,
23 which would include Roswell Road and also Peachtree
24 Dunwoody Road.

25 Q How about the little Catholic church in

1 Campbell-Stone?

2 A In where?

3 Q Campbell-Stone Senior Living.

4 A I'm unaware. If there is a, a church
5 within Campbell-Stone it would be an, an accessory
6 use in effect to the facility. And I would assume
7 that that serves the Campbell-Stone development. If
8 you're talking about the mission on north,
9 Northland, I mean not north, but Northwoods Drive,
10 then that is the one place where I would expect we
11 have mostly walkers. There's not, not a bus line
12 that reaches them because Northwood is, is, the, the
13 mission is close to Lake Forrest on Northwood Drive,
14 and that's a fairly long walk from Roswell Road.
15 But that, because there are apartments in the area,
16 that, that mission predominantly serves that walking
17 community around it.

18 Q No, I was actually talking about the
19 Catholic church that they do a mass at
20 Campbell-Stone every Saturday afternoon.

21 A Well, I assume that serves primarily the,
22 the residents of Campbell-Stone, and I don't believe
23 we have a, a use permit for that. So I would view
24 that as an accessory use of Campbell-Stone.

25 Q But you don't know whether it serves

1 Campbell-Stone residents primarily or if other
2 people are bused in or carpooled in?

3 A No, I don't.

4 Q In your response to No. 16, which asks for
5 each instance in which the City has denied a zoning
6 variance or building permit for a church, you list a
7 Lake Forrest Drive address, Mr. Hemsa Monfaired. How
8 do you say his last name?

9 A I don't recollect anymore.

10 Q You know what I'm talking about?

11 A I do remember the case, but I don't
12 remember his name.

13 Q And why was that denied?

14 A It was denied because he was not able to
15 bring that facility up to the standards of a place
16 of assembly. It was, there were a whole series of
17 issues related to it. It was on septic tank, and it
18 would have required sewer. It would have required
19 placing parking on most of the, the residential
20 area. He thought that he could keep a residence in
21 the building, but if he was using it as a place of
22 assembly it was going to be difficult if not
23 impossible to do it, and the cost was going to rise.
24 There were just a whole series of problems that
25 related to converting that to an assembly use that,

1 that he wasn't able to address.

2 Q So once it was denied, that applicant went
3 away or didn't pursue anything else?

4 A He, I have not seen anything, and I
5 believe the building is vacant right now.

6 Q Want to just verify on your answer to No.
7 19, which was please identify each instance from the
8 beginning of Sandy Springs to the present in which
9 the City has been unable to enforce occupancy
10 restrictions placed on property within the city.
11 Are there any instances where the City has been
12 unable to enforce occupancy restrictions?

13 A I'm not the person to ask on that because
14 the enforcer of most all of the occupancy
15 requirements is the fire department, and that would
16 have to come from them.

17 Q You say to date the City has not received
18 a complaint of overcrowding due to zoning
19 restrictions --

20 A That's correct.

21 Q -- is that correct?

22 A But fire code is a different issue, and
23 I'm not speaking to that.

24 Q Interrogatory No. 20, I'm just not sure I
25 understand the response. The question was please

1 identify each and every instance from December 31st,
2 2005 to the present in which the City has applied a
3 parking ratio other than one parking space for every
4 30 square feet or floor area or one, within the
5 largest assembly area within fixed seats or one
6 parking space for every 3.5 seats in the largest
7 assembly area, which is basically section, Article
8 18's requirement.

9 It's asking every church that the City has
10 not applied that requirement to. And there are a
11 number of churches listed, but all except one is
12 requiring more spaces than the City requires, is
13 providing more spaces than the City requires. So
14 what I want to --

15 MS. HENDERSON: Why don't you let her look
16 at that. And then if you can kind of simplify
17 that question, that would be helpful.

18 Q (BY MS. JONES) You looked at it?

19 A I looked at it.

20 Q So basically what I'm understanding that,
21 that, the response to be is that all except one of
22 those churches provided more parking than was
23 actually required by the ordinance, Article 18?

24 A Yes.

25 MS. HENDERSON: I'm going to object.

1 Q (BY MS. JONES) So the question I have is
2 are there any instances where the City, where the
3 City allowed less parking than required by the
4 ordinance?

5 A Okay.

6 Q And other than the congregation Beth --

7 A Yeah. Beth Tefillah.

8 Q Tefillah.

9 A The answer is that wasn't the question.
10 The question was where have we applied something
11 different than the standard. And if the parking
12 that was proposed in the approved site plan for the
13 use provided more, then that was not one per 30 or
14 any, anything in the requirement. It was more than
15 the requirement, and the City would have required it
16 because it was approved as a condition of zoning.

17 Q So are you saying that 16 spaces provided
18 by -- who's your first one?

19 A It, it doesn't list the, it just gives the
20 case number.

21 Q But so it says required parking, 12
22 spaces, provided 16 spaces. Are you saying for each
23 one of those that those, that larger number of
24 spaces was required as a condition of zoning?

25 A What I am saying to you is that if a

1 proposal comes to the City in which they have a
2 proposed site plan showing how they're going to park
3 the site, which we need to review in order to ensure
4 that all the City standards are met, we, and there
5 is no, and they exceed the requirements of the
6 ordinance, we condition them to the site plan. So
7 then they're required to meet, they're required to
8 do the site plan, and the site plan has the
9 additional parking in it. And so, yes, it would be
10 required.

11 Q Let's go back a step. I understand that
12 if you condition a rezoning to a site plan and the
13 site plan shows 16 spaces, then they have accepted
14 that as a condition of zoning.

15 A That's correct.

16 Q What I'm curious about is any instances in
17 which the City has of its own conditioned the zoning
18 on parking to be provided in excess of Article 18
19 requirements.

20 A The answer is that isn't what I researched
21 because that wasn't the question. So I can't give
22 you an answer to that without researching that.

23 Q Well, I will ask you to research that and
24 give me an answer because I, it must have been an
25 inaptly stated question. It was plain to me, but.

1 That's why this is like reading the Bible.

2 A It is.

3 Q Also the City submitted initial
4 disclosures. And in these initial disclosures the
5 City identified -- let's see. I'll find it. This
6 is why I can't set up my DVD player.

7 MS. HENDERSON: Sounds like a personal
8 problem.

9 MS. JONES: It is. It is.

10 MS. HENDERSON: I have similar personal
11 problems.

12 Q (BY MS. JONES) In your initial
13 disclosures, No. 5, you were asked to provide the
14 name, address, and telephone number of each
15 individual likely to have discoverable information
16 that you may use to support your claims or defenses
17 unless solely for impeachment identifying the
18 subjects of the information. I didn't make that
19 question up. That's federal court. The federal
20 court made that question up.

21 But anyway, you listed a number of people
22 that you believe have discoverable information that
23 the defendants may use to support their claims or
24 defenses. First, you listed Deborah Danos of the
25 Church of Scientology. I don't need to ask you

1 about what information she has. And you list
2 yourself. What information, and then you list all
3 these other people that I'm going to just ask you
4 about individually. What information does Patrice
5 Ruffin have that you were unable to provide today in
6 response to any of the questions?

7 A She might have more detailed responses in
8 some issues than I do because she would have been
9 closer to the preparation of the case.

10 Q And what, which --

11 A I don't know that I can tell you precisely
12 which items, but I listed her because she has, she
13 worked directly on the case and would have been
14 involved in its preparation and gathering of
15 information. And so she may have information that,
16 that I didn't have personally.

17 Q And one of the reasons why I'm asking this
18 is I'm trying to determine if I need to take these
19 various people's depositions.

20 A I understand.

21 Q So you can streamline the process if you
22 can.

23 A Well, if you go through the names first I
24 may be able to go back then and help you.

25 Q We have Chris Miller.

1 A Chris is my deputy director. I think it's
2 less likely he is going to have any information
3 that, that, that, that I don't have and that Patrice
4 doesn't have.

5 Q Linda Aberay.

6 A Linda was the case planner. She certainly
7 might have information, detailed information on what
8 she did.

9 Q Would Patrice or Linda have written
10 information that would not be in the zoning file?

11 A No.

12 Q Zasar Geraldo?

13 A Zasar is the zoning administrator, and I
14 mentioned to you that he also reviews these items;
15 but I believe that either Patrice or Linda would
16 probably have most of the, any additional
17 information that I don't have in, in the zoning
18 division.

19 Q Mark Moore?

20 A Mark Moore you've already deposed, and
21 he's the traffic engineer. So I think you probably
22 know which information he has.

23 Q Did you have any discussions with Mark
24 Moore when you were working on the alternate
25 conditions regarding the feasibility of the

1 alternate conditions?

2 A I don't believe there were any traffic
3 issues that were involved so, no, I would not have.

4 Q Terry Robinson?

5 A Terry is the person who actually manages
6 the, the council meetings, but I don't believe he'll
7 have any specific information that, that you might
8 need.

9 Q Joslyn Stevens?

10 A Joslyn is the administrative coordinator,
11 and she also may have done some of the transcribing
12 of some minutes; but I don't believe she would have
13 any information over and beyond the first two.

14 Q And Doug Tretton?

15 A Doug Tretton is another planner, but Linda
16 would have been the point on this case.

17 Q John McDonough.

18 A John McDonough is the city manager. I
19 doubt that he has any information beyond what we
20 have.

21 Q You listed the planning commission
22 members. Do the planning commission members possess
23 any information that you know of that was not
24 presented to them in the planning commission
25 hearings?

1 A I don't believe they would have any
2 information that was not either presented them, to
3 them by us or is in the public record.

4 Q Now, you listed public citizens that
5 expressed either support or opposition to the City
6 at the relevant planning commission meetings. I
7 understand that these individuals may have some
8 knowledge that, or some that, that may lead to
9 discoverable information. What I want to know is
10 specifically out of these people you listed do you
11 know of that knowledge, and I'll let you look at
12 that.

13 A And let me look at that and I can, there
14 are one or two that may, may be. I can't remember
15 the names.

16 MS. HENDERSON: I will stipulate for you
17 that in putting that list together if we found
18 a name in the record, we put it on the page.

19 MS. JONES: I figured that. I just want
20 to make sure that there's not somebody sitting
21 out there with a treasure chest full of stuff
22 that I need to know about.

23 THE WITNESS: What I cannot remember, so
24 I'm going to tell you that we'll get you the
25 name, I'm sure it's in here, is the architect

1 that lives, I believe, in Round Hill
2 Condominiums that commented on the, the
3 building plans and the square footage. But I
4 don't remember his name, but I'm sure that I
5 can go back and we can figure that out.

6 Q (BY MS. JONES) Was it Mr. Holland?

7 MS. HENDERSON: I don't remember his name
8 either.

9 THE WITNESS: I mean I, if you told it to
10 me I don't think I would recognize it, but I
11 can find out.

12 Q (BY MS. JONES) Well, to what extent did
13 the City -- Hubbell, it was Mr. Hubbell.

14 A It may be Mr. Hubbell.

15 Q He had quite a bit of correspondence in
16 the, in the record that we received. How does the
17 planning department or the staff use information
18 from citizens who either support or oppose a
19 rezoning? What do you do with that information when
20 it comes in?

21 A Well, most, I mean if, there are a couple
22 of things that happen. If somebody raises a
23 question, then we determine whether it is relevant
24 to the case or not. And if it is, then we try to
25 address it or to get information from the applicant

1 to address it. If they have a technical review, and
2 I believe in this case Mr. Hubbell did and
3 questioned the square footage of the building that,
4 the information that was presented, then we try to
5 verify whether that is indeed true or not.

6 Generally we would go to the applicant and
7 ask them to verify for us whether what he is
8 alleging is, is true or not and get some information
9 to get a corrected piece of information. He was
10 raising the issue because the square footage
11 contributes to the parking requirement so obviously
12 it was relevant to the discussion. So the answer is
13 if they raise questions that seem appropriate to the
14 kinds of considerations that the City would take on
15 a rezoning case, then we would examine them and try
16 to get additional information on them and, and
17 address them as part of the case.

18 If it is something that, where we need
19 additional information from the applicant, we go
20 back to the applicant and request that they provide
21 us with that information. And I believe both of
22 those happened in, in this case, depending on who
23 brought the, the issues forward. But the piece that
24 I think is probably most relevant to your question
25 about information as opposed to questions would be

1 the architect who raised questions about the square
2 footage of the building.

3 Q How about the questions raised by
4 Mr., Mr. Dogrell?

5 A He, well, he raised technical questions as
6 well. I mean I, he came in very late in the
7 process, and so I'm not sure. The, most of the
8 discussion had occurred before he came into the,
9 into this so I guess I forgot about that.

10 Q Oh, he's not on this list either, so.
11 Just --

12 A You can add him to the list.

13 Q But basically when these questions are
14 raised, you make an attempt to verify what the
15 answer is?

16 A If it is relevant to the case. I mean I,
17 you know, obviously issues get raised that aren't
18 related to the rezoning of the property. And if
19 they don't relate to a relevant issue that we need
20 to address, then we may not deal with it. But if it
21 is relevant to our review, then we would ask a
22 question and try to get an answer to it.

23 Q Well, I remember I was at the hearing and,
24 and in reviewing all of this there was an issue
25 raised about -- where did it go? It was in Article

1 19, off-site parking.

2 A Yes.

3 Q And here it is, Article 19.

4 A Uh-huh.

5 Q This is going to be --

6 MS. HENDERSON: This will be 19.

7 MS. JONES: Nineteen, how appropriate.

8 (Document was marked for identification as
9 Plaintiff's Exhibit No. 19.)

10 Q (BY MS. JONES) Again, this is an excerpt
11 from the zoning ordinance. And there was a
12 requirement on 19-3-6-1B --

13 A Two.

14 Q -- 2 that requires that no more than
15 20 percent of the total parking requirement may be
16 provided off site via an administrative permit that
17 is allowed under this article. I believe that that
18 issue was raised by Mr. Dogrell at the hearing.

19 A It was.

20 Q And my recollection is that no one really
21 had an answer to that question. And so I'm asking
22 you how, if it does, does this code section apply to
23 the instant application.

24 A We evaluated this relative to the fact
25 that the, it had been previously approved as part of

1 the, this building and determined that in this case
2 it was a preexisting parking area that was approved.
3 And, therefore, we allowed it to go forward even
4 though it exceeded the 20 percent.

5 Q And when you say it, you're talking about
6 the --

7 A Yes.

8 Q -- post office easement?

9 A Yes, uh-huh, that's correct.

10 Q Would you agree that if Article 18.1,
11 parking requirements for churches and places of
12 worship, were literally applied to the largest
13 assembly area of the Roswell Road building that they
14 have more than enough parking spaces --

15 MS. HENDERSON: Objection.

16 Q (BY MS. JONES) -- to meet that
17 requirement?

18 MR. DILLARD: You can answer to the extent
19 you can.

20 THE WITNESS: The, the, the parking would
21 be sufficient for the place of assembly and the
22 related accessory uses under that provision.

23 Q (BY MS. JONES) Because you would multiply
24 3.5 times 12 or 1300? I can't remember --

25 A It varied, yeah.

1 Q They kind of used it a little bit --

2 A Interchangeably, yeah.

3 Q -- interchangeably. Okay. That doesn't
4 mean I'm through. That's just, okay. And then
5 Crystal Williams, what kind of information might she
6 have that -- she just wrote an emergency services
7 letter; is that correct?

8 A I believe so. I think that's who that is.

9 Q So would she have other information --

10 A No.

11 Q -- that would be discoverable?

12 A No. They're just, we provided you with
13 everyone we knew.

14 Q So Doug Smith, who wrote the Bureau of
15 Drinking Waters comment, and James Buchan, who wrote
16 the DOT comment, and Monica Robinson, who wrote the
17 Fulton County Environmental Health Services comment,
18 all of their, all of their knowledge would be
19 contained in their comments that they submitted?

20 A I believe so.

21 Q Now, I think we've got one more leg of
22 this journey.

23 MS. HENDERSON: You want to take a quick
24 break first?

25 MS. JONES: Sure.

1 (A recess was taken from 1:51 p.m. until
2 1:57 p.m.)

3 Q (BY MS. JONES) I'm going to show you, and
4 this is a quicky here, what's previously been marked
5 as Plaintiff's Exhibit 3 and ask you if you
6 identify, if you have seen these photographs before.

7 (Discussion ensued off the record, and
8 Mr. Dillard left the proceedings.)

9 Q (BY MS. JONES) We're looking at --

10 A Yeah.

11 Q -- Plaintiff's 3.

12 A Yeah. I've, I've seen these before.

13 Q Do you know who took these pictures?

14 A I do not recollect who took them. I had
15 someone go up, but I don't know who it was that took
16 them.

17 Q But these pictures were taken by the City?

18 A Yes.

19 Q Or for the City. And what was the purpose
20 of the pictures?

21 A Just to make sure that we had appropriate
22 photographs of both the subject property and
23 surrounding properties.

24 Q Did you give specific instructions of what
25 you wanted the photographs of?

1 A Well, normally we, we photograph what, the
2 subject property and the surrounding properties so
3 that we have a record of that. And so that appears
4 to be what, what was done.

5 Q I see what appears to be several
6 photographs of the street.

7 A Yes.

8 Q Was there some specific item you were
9 looking to memorialize by photographing the street?

10 A No.

11 Q Do you generally make photographs of the
12 street in front of properties to be rezoned?

13 A We would normally photograph the, the
14 property and the area around it, which may include
15 the roadways. And I lean to the person in the field
16 to make a judgment on what they think is
17 appropriate.

18 Q I am looking at the one that's marked
19 R000505.

20 A Five oh five?

21 Q The third one in.

22 A Yes.

23 Q Fourth one in.

24 A Yes.

25 Q Which way am I looking there, north or

1 south?

2 A I have to orient myself to see here. It
3 would appear -- I'm not sure. I, I see the light.

4 Q Do you think that's that light up there
5 where that horrible intersection is where you turn
6 onto Glenridge? No, that wouldn't --

7 A No, it's not. It, that's, the turn lane
8 is incorrect for that and the building on the left
9 isn't clear. This may be going -- I'm not sure. I,
10 speculating isn't very helpful.

11 Q So you don't know?

12 A I'm not sure where, where that one is,
13 yeah.

14 Q Although the first photograph --

15 A Is on Glenridge.

16 Q Is on Glenridge?

17 A Uh-huh. Yes. That's the post office on
18 the left and the condos on the right.

19 (Mr. Dillard returned to the proceedings.)

20 Q (BY MS. JONES) That's that. Now, I've got
21 this series of staff reports. So this is your opus
22 here that I want to ask you about.

23 MS. HENDERSON: This is a Bible, isn't it?

24 MS. JONES: Yeah.

25 Q (BY MS. JONES) Well, I have to say I'm

1 impressed by the volume of staff documentation.

2 You actually change your staff report each time or
3 you --

4 A Well, you make the change --

5 Q -- date it and --

6 A Yes. If, if, if it's being deferred for a
7 reason and you don't respond to the reason, then you
8 haven't done your job, so.

9 Q What I'm looking for is my notes to myself
10 about this. Here we go. Let me show you what has
11 already been marked as Plaintiff's Exhibit No. 2,
12 get you to identify that.

13 MS. JONES: And I think that I gave my
14 third copy to you last time, Laurel.

15 MS. HENDERSON: You did.

16 Q (BY MS. JONES) You have identified it?

17 A Oh, I'm sorry. I'm sorry.

18 Q You were waiting for me; I was waiting for
19 you.

20 A I'm, I'm trying to identify it so let me,
21 give me just a moment here.

22 Q No. Go right ahead. Take your time.

23 A Yes. I believe, well, this is one of the
24 versions of what we prepared. And it would appear
25 that this was going to the mayor and city council

1 hearing on June 16th.

2 Q We're not looking at the same thing.

3 A That's what I, I'm looking at the report
4 and the report says --

5 Q Here is what I think it is, and let me
6 just ask you if that makes sense because as you get
7 past that first page that says prepared for the
8 planning commission hearing on September 18th, 2008,
9 at the bottom of Page 146, which is your --

10 A Yes, uh-huh.

11 Q The rest of the pages say prepared for the
12 planning commission on May 21, 2009.

13 A They do and --

14 Q And that would be the planning commission
15 date that's listed up here at the top.

16 A Yes. And that appears most likely, given
17 that I have the, the following council version and
18 it is not exactly the same, I agree.

19 Q So we would agree that it was prepared for
20 the May 21st, 2009 planning commission hearing?

21 A I agree.

22 Q In that staff report, and I'm pointing you
23 to Page 153, or when I say page I mean that
24 reference 153.

25 A Yes.

1 Q Would you agree that the staff analyzed
2 the parking impact using the aggregate of the uses
3 in the building?

4 A That's correct.

5 Q The staff did not apply Article 18,
6 parking requirements, to this particular zoning
7 application --

8 MS. HENDERSON: Objection.

9 Q (BY MS. JONES) -- is that correct?

10 A At this time. At this time.

11 Q And then you turn to the next page. Did
12 the staff assume in using this aggregate of the uses
13 in the building 100 percent use of the entire
14 building at one time?

15 A The staff assumed that the uses were
16 devoted as indicated in the table and applied the
17 parking standards to those uses.

18 Q So the staff assumed that the sanctuary,
19 the classroom, and the offices would all be used at
20 the same time; is that correct?

21 A The staff certainly assumed that the
22 classroom and the, classrooms and the offices might
23 be used at the same time. It is the staff's
24 responsibility to prepare an analysis of the full
25 use of the building and not a partial use of the

1 building and, therefore, the staff would assume full
2 use. The sanctuary's a relatively small part of
3 that, and so it didn't have a significant impact on
4 the parking.

5 Q But it was also assumed to be used at the
6 same time as the classrooms and the offices, right?

7 A Based on the, the applicant's discussion
8 of the use of the building, that is what the staff
9 assumed.

10 Q Now, when the staff did its analysis of
11 the Lutheran church at Hammond Drive and Glenridge,
12 did it use this same parking analysis as it has used
13 for the Church of Scientology building?

14 A No, it did not.

15 Q It did not break down the uses and add
16 them up?

17 A That's correct. And the representative of
18 the church didn't indicate that this was the way the
19 facility was going to be used. The staff was
20 responding to the information from the applicant in
21 preparing this.

22 (Mr. Dillard left the proceedings.)

23 Q (BY MS. JONES) Then on Page 156 it looks
24 like you got, on the top of 156, one, one, two,
25 three, four department comments are noted, and the

1 transportation department only commented on
2 right-of-way dedication and right-of-way
3 reservation; is that correct?

4 A That's --

5 Q Sandy Springs transportation.

6 A That's correct.

7 Q And there was no concern noted by the
8 transportation department about traffic flow in the
9 area of the building?

10 A I'm not sure that I understand your
11 question.

12 Q Mr. Moore is the Sandy Springs
13 transportation planner?

14 A Yes.

15 Q And his report, his departmental comment
16 did not include any concerns about the flow of
17 traffic on Roswell Road or Glenridge in terms, yeah,
18 in relation to the use of the Church of Scientology?

19 A Can I recraft what I think you're asking
20 me so that I --

21 Q Please.

22 A Are you asking me whether he believed
23 there would be an impact of this use on the traffic
24 flow on those roads? Because if you are asking me
25 what the, what, for him to comment on the traffic on

1 those main roads, that would not be a comment that
2 we would get on the case.

3 Q All I'm asking you is he did not make any
4 comment?

5 A He did not talk about the impact of this
6 use on the traffic on the traffic on the main line
7 because he indicated --

8 (Discussion ensued off the record.)

9 THE WITNESS: -- because he, there was no
10 indication that there was, was, that there
11 would be any issue related to this use over
12 using the roadway where there would have to be
13 additional project improvements on the project
14 to serve this case.

15 Q (BY MS. JONES) I'm looking at the comments
16 that were made by the public. And on Page 156 the
17 public commented that the City is not able to
18 collect taxes on a church.

19 (Mr. Dillard returned to the proceedings.)

20 Q (BY MS. JONES) And it, and then there's a,
21 like a little hyphen, and it's in italics, true. Is
22 the true in italics the City's comment to the public
23 comment?

24 A It is the staff's response to the public
25 comment.

1 Q And to what extent does the ability to
2 collect taxes on a church use impact the City's
3 willingness to rezone a piece of property for use as
4 a church?

5 A Well, I can't speak to the mayor and city
6 council, but it is not a standard that the staff
7 addresses. However, if an issue is raised in a
8 community meeting, it is best to respond to it with
9 whether or not that is a, a true statement or not.
10 And so that's what we did.

11 Q And then the amount of money raised for
12 the project, is that a relevant factor for the staff
13 to consider?

14 A No.

15 Q Then on Page 158 the staff concluded that,
16 at the end that the entire 43,246 square feet could
17 be recommended for approval by staff if applicant
18 can demonstrate that the on-site parking will be
19 sufficient to meet the full use of the proposed
20 building, including the expansion through either a
21 parking study or shared parking analysis. Did the
22 applicant provide a parking study or a shared
23 parking analysis?

24 A There was no shared parking analysis
25 because the, the proposed shared parking already

1 However, we did indicate that we wanted to make sure
2 that, that we were dealing, we were dealing with a
3 fully occupied building. We wanted to understand
4 how others operated, and we wanted to see the
5 factors that might play into how they, they dealt
6 with the issue of people getting to the site.

7 Q Did you have any, any concerns about the
8 choice of Kimley-Horn to do the traffic study for
9 the plaintiff?

10 A No. They're a, a well-respected firm.

11 Q I think you might have said this, I'm not
12 sure, but is the use of the building consistent with
13 the future land use plan of Sandy Springs?

14 A Yes.

15 Q What kind of variance, and I'm looking at
16 Page 158 where you reference, reference a variance.
17 It's in the No. F. It says staff recommends the
18 total building area be limited to 32,053 square feet
19 unless the applicant receives a variance from the
20 minimum parking requirements or can demonstrate a
21 reduction as warranted due to the operation of use
22 such that parking spaces could be shared. What kind
23 of variance from parking requirements would be
24 available to the church that, that you're talking
25 about here?

1 A It really, it would require a study that,
2 that show us that, that the, the parking could be
3 accommodated for the full use of the building. And
4 the staff has to anticipate the full use of the
5 building.

6 Q As it's laid out in this chart?

7 A As the applicant desires to use the
8 building. Our request was, our effort was to
9 understand what was being done in the building.

10 The applicant indicated in the community
11 developer resolution meeting that this didn't
12 operate like many other churches, that it was, that,
13 that the main function was not a place of assembly
14 on Sunday morning and that the largest accumulation
15 of people on the site might not occur during that
16 time period but rather that that was a smaller piece
17 and that the, the, the, the piece that, that
18 involved the, the studies and the rotations through
19 the rooms, et cetera and the counseling was a, a
20 very, very important part of this.

21 And the staff was making an effort to try
22 to address how this church operated in terms of the
23 numbers of people there. It was not something we
24 understood to start with, and so our continuing
25 efforts were to better understand exactly how the

1 building functioned so that we could understand how
2 to deal with the question of whether or not there
3 was enough parking.

4 Q If indeed you were satisfied with the use
5 of the building, what kind of variance would be
6 available to alter the requirement, to reduce the
7 requirement for parking?

8 A It would be something that the director
9 could sign off on at least initially, and then if
10 the applicant was not satisfied with that, they
11 could carry it to the board of appeals.

12 Q Is there a percentage limit on the
13 director's authority to sign off on a variance?

14 A Well, in this case it would be, it would
15 be a condition of zoning. So it would be an
16 interpretation of what would be required under a
17 condition, and then it would be an appeal of the
18 director's opinion to the board of appeals.

19 Q If the church agreed with the director but
20 somebody else disagreed with the director, then --

21 A Then my lawyers would have to tell me
22 whether the neighbors can appeal or not because I
23 don't know whether they have standing.

24 Q Well, how about if the board of appeals
25 wanted to sue itself?

1 A Well, they could do that. Or we can sue
2 them, right?

3 MS. HENDERSON: Apparently so.

4 MR. DILLARD: Absolutely no question about
5 it.

6 (Discussion ensued off the record.)

7 Q (BY MS. JONES) Let's look at Plaintiff's
8 Exhibit No. 20.

9 (Document was marked for identification as
10 Plaintiff's Exhibit No. 20.)

11 Q (BY MS. JONES) Hand that to you.

12 MS. HENDERSON: You want to keep the one
13 with your flags on it?

14 MS. JONES: Oh. Yeah.

15 Q (BY MS. JONES) And is this the staff
16 report prepared for the city council meeting for
17 June 16th, 2009?

18 A Yes, it is.

19 Q And your comment on Page 177 was that
20 because the sanctuary is not proposed to be the
21 largest portion of the building, the lack of parking
22 could cause an excessive or burdensome use of the
23 existing infrastructure?

24 A The --

25 MS. HENDERSON: One seventy-seven.

1 THE WITNESS: Oh, one seven -- I'm sorry.
2 I'm on 176. That's why I can't.

3 Q (BY MS. JONES) Bottom of 177.

4 A Okay. Yes.

5 Q And the excessive or burdensome use you're
6 talking about is your concern that the attendants to
7 the church would park on private property or on the
8 streets?

9 A No, it's not -- well, let me qualify that.
10 If they could park on other private property, I
11 don't believe that there is a public street, at
12 least not a major public street that they could park
13 on. But if people were trying get into the parking
14 lot and they could not get in and the traffic backed
15 down onto Roswell Road, it could back up the traffic
16 there and cause accidents.

17 Q And if the people parked on private
18 property, other private property other than the
19 church property, they would be trespassing, wouldn't
20 they?

21 A I would consider it that.

22 Q And they could be charged with
23 trespassing?

24 A If the property were posted.

25 Q Would that be something that the church

1 could do would be to offer to post nearby properties
2 so that --

3 A I think they would have to have that
4 conversation with the property owners. That
5 wouldn't be something that I would, would know
6 about.

7 Q Was that discussed at all?

8 A That was never raised by the applicant.

9 Q Was it raised by the City?

10 A No. The, the, the City requires that the
11 parking on site be sufficient to meet the needs of
12 the facility. So it was not the staff's position
13 that we needed to assist someone in parking, in
14 required parking on other properties. And I'm not
15 aware of any facilities other than the post office
16 that have excess parking in the area, with the
17 exception of The Prado, which may not have any
18 excess parking for very long.

19 Q They wish.

20 A Well, we have an application in to --

21 Q Oh, good.

22 A -- address the back property.

23 Q Good. So on, in this June 16th, 2009
24 report the staff recommended approval of the
25 rezoning application limited to the 32,053 square

1 feet density and other conditions that are on Page
2 179 and 180?

3 A Yes.

4 Q Show you 21.

5 (Document was marked for identification as
6 Plaintiff's Exhibit No. 21.)

7 Q (BY MS. JONES) I'm going to show you
8 what's been marked as Plaintiff's 21. Is this the
9 planning commission, was this the report prepared
10 for the planning commission meeting July 16th, 2009?

11 A Yes, that's what it appears.

12 Q At that point you had a parking study of
13 the Nashville facility and the Dunwoody facility; is
14 that correct?

15 A Well, I'm looking to see.

16 Q Okay.

17 A Yes.

18 Q And what conclusions did the staff reach,
19 having reviewed the parking study from Nashville and
20 Dunwoody? I'm looking on Page 253.

21 A Yes, I am too.

22 Q Okay.

23 A I think we continued to conclude that
24 there would not be enough parking for the 43,000
25 square foot facility but the 32,000 square foot

1 facility could be accommodated.

2 Q How did you come to the conclusion based
3 on the Nashville study, how did you use that study
4 to come to your conclusion?

5 A Well, the Nashville study was a little bit
6 difficult to deal with because the, the building had
7 only been in occupancy for six months. It, we could
8 not tell how much of the building was actually
9 occupied. The parking ration in Nashville was three
10 spaces per thousand square feet, which was
11 essentially consistent with what, what is currently
12 provided on the existing site with the 32,000 square
13 foot building. And, but that wouldn't support the
14 43,000 square foot building. That would support a
15 32,000 square foot building in our opinion.

16 Q You said the parking ratio for Nashville
17 was three per thousand square feet?

18 A Yes, ma'am.

19 Q And was that derived by dividing the
20 number of square feet in the Nashville building by
21 114 spaces?

22 A I believe it was. And I, it may have been
23 in the report. I can't remember because I read the
24 report a long time ago.

25 Q Did the Nashville ordinance require that

1 ratio, or was that just derived from the actual
2 number of spaces ratio to the square footage of the
3 building?

4 A I don't believe that they gave us that
5 information. I don't believe they told us whether
6 it was required in the ordinance or not.

7 Q Were all of the 114 spaces being used when
8 the study was done?

9 A I, they were not, but I don't know what
10 proportion of the building was occupied either. So
11 I couldn't, it, it didn't tell me what I needed to
12 know.

13 Q Did it have any kind of breakdown of
14 spaces used in the building for different
15 activities?

16 A It didn't tell me how close to full
17 occupancy the building was. And without knowing
18 what proportion of the full occupancy they were at,
19 I couldn't tell how close they were on the parking.
20 If half the parking were used and the building was
21 about at half of what would be expected, then I
22 would have something that I could deal with, but I
23 didn't have that information.

24 (Discussion ensued off the record.)

25 Q (BY MS. JONES) So basically you said

1 Nashville ratio was three spaces per thousand square
2 feet of building space, which would require, and
3 then if you applied that to Sandy Springs' three
4 spaces per thousand feet of building space, Sandy
5 Springs would need 130 spaces, is that? That's the
6 middle of the second paragraph of parking and
7 traffic impact analysis.

8 A Yes. If, if you were going to the 43,000
9 square foot building, yes.

10 Q So you would require 130 spaces. If we
11 have 111 spaces, which you said the site currently
12 has 111 spaces?

13 A Yes.

14 Q That's the Sandy Springs site. If you
15 divide the number of square feet of the building by
16 111 spaces, don't you get more than 32,053 square
17 feet?

18 A It didn't seem to make a great deal of
19 sense to try to deal with enclosing only a portion
20 of the garage unless I had information that led me
21 to believe that could be done. It would have
22 allowed some additional square footage, but I don't
23 know that I had enough information to know whether
24 we could do that or not.

25 Q So you didn't exactly apply the Nashville

1 ratio to the building?

2 A I didn't have enough information to, to do
3 that. We would have been happy to do it had we
4 known it was possible, but I didn't believe that
5 enclosing a portion of the garage -- well, for one
6 thing because enclosing a portion of the garage, I
7 wasn't sure how many parking spaces I was going to
8 lose.

9 I hadn't at that point had an opportunity
10 to go in to see whether all of the basement was
11 actually parking garage or whether there was some
12 building and storage area in addition. So I really
13 couldn't address exactly how to do that garage. So
14 at that point we, we went between the existing and
15 the proposed, and we didn't try to find a middle
16 ground. Had we had more information, we might have
17 been able to.

18 Q Do you know what the planning commission
19 did with that night, July the 16th?

20 A I'd have to go check their action. I'm
21 sure it's going to say.

22 Q One of these has it.

23 A The planning commission recommended
24 approval subject to the staff's conditions, so the
25 32,000 square feet.

1 Q Let's look at No. 22.

2 (Document was marked for identification as
3 Plaintiff's Exhibit No. 22.)

4 Q (BY MS. JONES) This is your punishment for
5 being so thorough.

6 A I know.

7 MS. HENDERSON: No good deed goes
8 unpunished, does it?

9 THE WITNESS: That's right.

10 Q (BY MS. JONES) And this appears to be --
11 wait a minute. This goes on the back of that. Now,
12 I want to say that Pages 19 to 22, I did not find
13 them attached to my Bates stamped copies, but they
14 were attached to the copy we had in our file. So I
15 don't know if they just inadvertently did not get
16 stamped or got separated or --

17 MS. HENDERSON: I don't know because
18 unfortunately when the stuff comes to my office
19 I get a big pile of unstapled papers, and I
20 make the best sense of it I can. So I don't
21 know.

22 MS. JONES: Well, I just want to say that
23 is why --

24 MS. HENDERSON: Yeah.

25 MS. JONES: -- 19 and 22 don't have your

1 Bates stamp on them.

2 MS. HENDERSON: Okay.

3 MS. JONES: But I don't have any reason to
4 believe that those pages --

5 MS. HENDERSON: I think you probably --

6 MS. JONES: -- were not attached.

7 MS. HENDERSON: -- have 19 through 22
8 Bates stamped somewhere else.

9 MS. JONES: Somewhere. That may be.

10 MS. HENDERSON: Just not here.

11 MS. JONES: And when I saw them, they came
12 without an index so all I had was the numbers.

13 Q (BY MS. JONES) So would this be the staff
14 report presented to the planning commission on
15 August 18th, 2009?

16 A No. To the mayor and city council.

17 Q To the mayor and council. Oh. Well --

18 A You had the planning commission version
19 here.

20 Q So on Page 2 where it says prepared for
21 the planning commission meeting, it really should
22 say city council meeting?

23 A It should.

24 Q All those succeeding ones should say city
25 council meeting, not --

1 A Yes. Yes.

2 Q Okay. But this went to --

3 A We were consistent.

4 Q This went to the city council. And at
5 this point were additional, was an additional
6 parking study presented?

7 A I'd have to look --

8 Q Okay.

9 A -- to see. Yes. That is the time when we
10 received the parking study for Buffalo, New York.

11 Q And I'm looking on Page 289, which is a
12 chart, Table 2. Could you explain to me what the
13 function of this chart is.

14 A Well, I can't read, I'm going to go to my
15 version of this because I can read the top header.

16 Q Go right ahead. I had to pull one out of
17 our version to be able to read it too, so.

18 A This was a, an effort to take a look at
19 the, the, the proposed facility in Sandy Springs,
20 the three studies that were provided to the staff by
21 the applicant for the, the sites outside of, well,
22 outside of Sandy Springs that parking studies were
23 done on and then to look at the more recent, some of
24 the more recent case, church cases that the staff
25 had dealt with in terms of the, the square footage

1 of the building, the, the proportion of the building
2 that is the sanctuary and the parking that, that has
3 been provided and the parking provided per thousand
4 square feet so that we could take a look and see
5 what we were actually looking at in the building to
6 make sure that we were addressing it properly.

7 Q Who created this chart?

8 A That would have been the staff.

9 Q Who instructed the staff what to put in
10 the chart?

11 A The staff was instructed to prepare a
12 chart that showed the information provided plus the
13 information on the churches where issues had been
14 raised in the past or that had been recent actions
15 and those were under my instruction to do the
16 evaluation.

17 Q Where is the Temple Sinai?

18 A Temple Sinai is up in Council District 1,
19 I believe, off of, I forget which road it is. I
20 believe I'm correct on that.

21 Q The Temple Sinai has a 64,800 square foot
22 building; is that correct? Am I reading that right?

23 A Yes.

24 Q And out of that building square footage,
25 3695 square feet are used for the sanctuary?

1 A That's correct.

2 Q Did the City apply Section 18, Article 18
3 for churches and places of worship to the Temple
4 Sinai to --

5 A I don't --

6 Q -- arrive at the parking?

7 A -- I don't recollect that this came in
8 during the period when the city, when we were a
9 city. However, the, the parking is, is consistent
10 with what we would, would expect under that
11 analysis, but I'm not, I don't recollect that, that
12 it was a city project.

13 Q Why was it chosen to be on this chart?

14 A I think because it had very large square
15 footage and the place of public assembly was
16 relatively small. You'll notice that that's at 6
17 percent, and we wanted to show a range. And this
18 was an example that could be used here in the city,
19 and then we looked at the parking that was provided
20 in addition.

21 Q What is the other 61,000 square feet being
22 used for at the Temple Sinai?

23 A I'm, I'm not sure. They probably have
24 some educational facilities. I'm really not sure,
25 but they clearly are, are providing a significant

1 amount of parking for it.

2 Q Do you know if they have a Hebrew school
3 or something there?

4 A They, they may very well.

5 Q Where did you get this information about
6 the Temple Sinai? Where is that kept?

7 A I would assume it came out of a zoning
8 case.

9 Q Do you know when that zoning case
10 occurred?

11 A No, not without going back and getting the
12 case.

13 Q You indicated to me that that may not have
14 been zoned during Sandy Springs' existence?

15 A I don't recollect that it was. I'm not
16 going to tell you that it wasn't, but I'm not going
17 to say -- I, I don't recollect that it, that it was.
18 And I think I probably would remember.

19 Q Where is the Matthew Leighton Imerman
20 Chabad Center?

21 A I am not sure which of, of two centers it
22 is. It may be the chabad center that we looked at
23 before, I think it is, which is on Highpoint Road.
24 There is another similar facility on Mount Vernon,
25 but this, I believe, is the Highpoint Road facility.

1 Q And it goes by some other name also?

2 A Well, we called, I think we called it the
3 chabad center.

4 Q Oh, okay.

5 A Or Temple Beth, Beth Tefillah. But I
6 think the chabad center and Beth Tefillah are the
7 same facility, but I'm not sure.

8 Q Now, you looked at the Buffalo, you looked
9 at the Buffalo study. Did the Buffalo study have no
10 information on its parking?

11 A It does not have parking specifically for
12 that building. It apparently is a, an in-town
13 facility. And I haven't been in Buffalo recently,
14 but my recollection is in that area that, that
15 there's a lot of on-street parking, and they
16 probably use other parking. But it, it's a large
17 facility, but it does, I don't believe that they've
18 got on-site parking for that.

19 Q Do you know what the size of the assembly
20 area was in the Buffalo location?

21 A I couldn't without going back to the
22 study. I know what the building is, but I don't
23 know what the assembly area is.

24 Q Now, attached to this staff report is a,
25 are the conditions, and then there's a, then there's

1 three pages of alternate conditions. And they're at
2 the last, 19 to 22.

3 A Yes.

4 Q Did you present the alternate conditions
5 to the city council at that August 18th, '09
6 meeting?

7 A They were presented to the council but
8 with the indication that because they had been
9 prepared very late that the, the director and the
10 city attorney were recommending a deferral in order
11 to give the opportunity for the planning commission
12 to review these alternate conditions, and also the
13 mayor and council.

14 Q Were these alternate conditions conditions
15 that the staff and the city attorney and the
16 Scientology representative and attorneys had joint,
17 or had as a joint, jointly drafted?

18 A Yes.

19 Q Were they negotiated? Was there some back
20 and forth?

21 A I think that would probably be an accurate
22 statement.

23 Q It references on No. B, it says "the total
24 occupancy for the building shall be limited to" --

25 A If you could tell me B what number that's

1 under because I'm not sure.

2 Q That's under 1 --

3 A Okay.

4 Q -- 1B.

5 A Okay. Thank you.

6 Q Page 19 of 22.

7 A Yes.

8 Q It states that "the total occupancy for
9 the building shall be limited to a maximum of 283
10 persons based on a required parking ratio of one
11 space per every 3.5 persons within the building."
12 How did that, how did you arrive at that number of
13 283 persons?

14 A I don't believe I arrived at it. I
15 believe the applicant arrived at it based on a
16 figure of three-and-a-half people per vehicle.

17 Q Where did that three-and-a-half people
18 come from?

19 A I'm trying to remember what document that
20 came from. Off the top of my head I can't remember,
21 but by the end of the deposition I may. It's
22 rolling around up there.

23 Q There was a logical reason for 3.5
24 persons?

25 A There was, there was a reason for 3.5. I,

1 that was, and the applicant and we talked about
2 that, but I can't remember what it is right now.

3 Q And these alternate conditions provide for
4 a self-reporting method of keeping up with the
5 occupancy of the building; is that correct?

6 A Yes.

7 Q That the director of or the president or
8 whoever is in charge of the church would send
9 information to the City on some schedule; is that
10 right?

11 A That's correct.

12 Q And did the city council actually defer
13 hearings so the planning commission could look at
14 it?

15 A And because they hadn't had an opportunity
16 to really review this either. And so they wanted to
17 have the planning commission input before they
18 considered it.

19 Q Now we're at Plaintiff's Exhibit 23.

20 (Document was marked for identification as
21 Plaintiff's Exhibit No. 23.)

22 Q (BY MS. JONES) I want to show you
23 Plaintiff's 23. And is that the report submitted to
24 the planning commission meeting on September 17th,
25 2009?

1 A Yes.

2 Q This is another one of those situations
3 where --

4 A The front page is not correct, but the --

5 Q The rest of it appears to be consistent --

6 A Yes.

7 Q -- with what was going on?

8 A Yes.

9 Q Actually the planning commission didn't
10 even get on the hearing and meeting date's schedule
11 up here at the top.

12 A That's what I was missing up at the top
13 was, was the, that didn't get changed, but the, the
14 footer is correct.

15 Q Now, if you will look at Page 323, the
16 conclusion to findings. Well, let me go back to the
17 alternate conditions. If you'll look at Page 326.

18 A Three -- I'm sorry, what number was that?

19 Q Three twenty-six. That's Page 19 --

20 MS. HENDERSON: My numbers are cut off.

21 MS. JONES: -- of 22.

22 THE WITNESS: Okay.

23 MS. JONES: I'll accept blame for that. I
24 copied these myself.

25 THE WITNESS: Okay. I've got it.

1 Q (BY MS. JONES) And you're looking at 1B
2 again?

3 A Yes.

4 Q And that limits the total occupancy to a
5 maximum of 283 persons based on a required parking
6 ratio of one space per every 3.5 persons within the
7 building. And that's the same alternate conditions
8 as were presented to the council on August 18th; is
9 that correct?

10 A It appears to be. I haven't checked this
11 to make sure there were no changes, but I, this
12 looks to be the same so I assume it is.

13 Q So at that point on September 17th, '09
14 the alternate conditions were to cap the occupancy
15 at 283 persons. And if you would look at page,
16 well, that's before the alternate conditions. It's
17 going to be R323, which is Page 16 of 22, conclusion
18 to findings.

19 A Yes.

20 Q And in the conclusions the staff's opinion
21 that the, is that the proposed use and density when
22 applied with either the recommended conditions or
23 the alternate conditions are consistent with the
24 policies of the comprehensive plan. Therefore, the
25 staff recommends approval conditional of the request

1 to rezone the subject property to OI, office and
2 institutional, District 2, OI, office and
3 institutional district conditional and the
4 associated concurrent variances. The staff
5 recommends either the recommended conditions or the
6 alternate conditions for the approval of the
7 rezoning.

8 And that, is that what the staff's opinion
9 was as presented to the city council on
10 September 17th, 2009?

11 A Well, this would have been what the
12 planning, what the staff recommended to the planning
13 commission on September 17th, 2009.

14 Q Yes.

15 A Not the city council.

16 Q I'm sorry. I thought I said planning
17 commission, but my mouth sometimes does things that
18 my brain doesn't hear.

19 A That's what I thought I heard.

20 Q You probably did. So as of
21 September 17th, 2009 the staff was recommending the
22 recommended conditions, which limited the building
23 to 32,053 square feet or the alternate conditions
24 with the maximum capacity of 283 persons, correct?

25 A Yes.

1 Q To your knowledge did the staff present
2 any concern that the capacity could not be enforced
3 at, to the planning commission?

4 A I can't, I believe that the question was
5 raised by the planning commission. I don't
6 recollect exactly what was responded to in that
7 respect by, to the planning commission because the
8 planning commission actually raised the question of
9 enforceability.

10 Q You don't remember whether you
11 represented --

12 A I can't remember --

13 Q -- to the planning --

14 A -- I can't remember exactly what the
15 discussion was, and I'd rather go to the record than
16 to my memory.

17 Q That would be in the minutes I guess.

18 A Hand me that clip.

19 Q We're getting there.

20 (Document was marked for identification as
21 Plaintiff's Exhibit No. 24.)

22 (Discussion ensued off the record.)

23 Q (BY MS. JONES) Is this the report given to
24 the, who is this report, was submitted to the
25 October 20th, 2009 city council meeting?

1 A That's correct.

2 Q And it repeated on Page 394 -- I hope you
3 got those references there. It repeated the Table 1
4 that was previously in one of those staff reports?

5 A Yes.

6 Q And Table 2 on the next page --

7 A Yes.

8 Q -- that was in those staff reports. On
9 page, look at Page 383. At that point did the
10 applicant volunteer to reduce the occupancy count
11 from 283 to 170? I think we're on a different page.

12 A You said 383?

13 Q Three eighty-four.

14 A I don't know.

15 Q I'm sorry. I might have said 383. I
16 don't know what's coming out of my mouth right now.

17 MS. HENDERSON: Okay. We couldn't find
18 it. Okay.

19 THE WITNESS: Yes.

20 Q (BY MS. JONES) And what was the reasoning
21 behind the reduction from 283 to 170?

22 A The applicant and the staff were
23 responding to issues that were raised particularly,
24 I believe, the planning commission about whether the
25 3.5 persons per vehicle was a reasonable figure to

1 anticipate in terms of occupancy for any facility.
2 And after doing some research I believe that we
3 found a, a federal study done by the Federal Highway
4 Administration that supported one-and-a-half persons
5 per vehicle during the week and two people per
6 vehicle on the weekend. And the applicant
7 voluntarily reduced the occupancy of the building
8 down to 170 to address that issue.

9 Q And when you say we did the research, do
10 you mean the City did the research to come up with
11 that number?

12 A Yes. The City actually, we, our staff
13 actually researched. I, I asked our staff to look
14 into the literature and see if there were any
15 studies that would give us some guidance on this
16 figure. And the applicant indicated that they would
17 be interested in seeing that information as well,
18 and so we shared that with the applicant.

19 Q Who on the staff obtained that
20 information?

21 A It would have been either Patrice Ruffin
22 or Linda Aberay.

23 Q I know Patrice. Is Linda still with the
24 City?

25 A Yes, uh-huh.

1 Q And if you'll turn to Page 396, on the top
2 of the page that it, that the staff concluded that
3 the level of parking necessary to support the
4 proposed use in an occupancy of 170 would be
5 adequate?

6 A Yes.

7 Q And on Page 402 the staff finds either the
8 recommended conditions or the alternate conditions
9 are consistent and recommends either of them for the
10 approval of the rezoning?

11 A Yes.

12 Q And the alternate conditions attached are
13 essentially the same as what were attached to the
14 283 capacity cap except it was now reduced to 170?
15 Is that the change?

16 A I believe so. But without checking
17 everything in the case, I can't tell you if there
18 are no other changes.

19 Q And we're now at Plaintiff's 25.

20 (Document was marked for identification as
21 Plaintiff's Exhibit No. 25.)

22 Q (BY MS. JONES) Show you Plaintiff's 25.
23 It's got my stickies on it, but that's okay.
24 There's no notes, and it might just enable you to
25 turn to the page. And if you turn to Page 420.

1 MS. HENDERSON: Which page? I'm sorry.

2 MS. JONES: Four twenty.

3 Q (BY MS. JONES) Traffic analysis. It has
4 a, it has a traffic analysis with some red lines on
5 it. They're not red, but some cross-throughs in the
6 traffic impact analysis. Were those edits that the
7 staff made?

8 A I can't recollect without going back and,
9 and checking. It would appear so.

10 Q It recommends the 283 occupancy count. Is
11 that the recommendation?

12 A Yes.

13 Q That was the --

14 A Oh, no. This is --

15 Q -- only condition?

16 A No. It's, it's to 170.

17 Q To 170. It has gone down to 170 from --

18 A Yes.

19 Q -- the 283?

20 A Yes.

21 Q Oh, I see it. Applicant has proposed to
22 limit the occupancy from 283 to 170?

23 A Right.

24 Q And there's 81 spaces provided. And those
25 81 spaces are 30 post office spaces and 51 on-site

1 spaces; is that how they're counted?

2 A I would have to go look at the, I'm not
3 sure where it says it in here. I'm sure it's
4 correct. And if not, I'd have to check it.

5 Q Then finally the granddaddy of granddaddies
6 here, what's previously been marked as Plaintiff's
7 10. And is this the final staff report dated
8 December 15th for the December 15th, 2009 council
9 meeting?

10 A Yes.

11 Q And looking on Page 44, did the staff find
12 that the proposed request of 43,916 square feet
13 would meet the level of parking necessary to support
14 the proposed use at an adequacy, occupancy of 170
15 persons?

16 A I'm reading.

17 Q Okay. It's in the, sort of the bottom of
18 the third paragraph right above concurrent review.

19 A Yes, that's correct.

20 Q Turn to Page 454. And there's some
21 squares that have been circled there. And I'm
22 looking at that particular paragraph with the
23 circled 130 spaces and 97 spaces.

24 A Yes.

25 Q And I'm not sure I understand the, what

1 the restriping was, or what was restriping and what
2 was, what was going to be accomplished by the
3 restriping of the parking lot.

4 A Okay.

5 Q Could you fill me in on that?

6 A I think I can explain it without going
7 into counting all the spaces. There were two things
8 that were going to happen. There, the, there was
9 going to be an expansion of the number of spaces
10 provided in the parking lot. And the way to do that
11 was in two ways. Number one, there were some
12 parking spaces that could be achieved by some
13 additional paving and filling in of, of parking
14 spaces behind the, the wall around the, that goes
15 around the building, which would, and which required
16 a variance in order to park in the, the front yard
17 setback and take out the landscaping in that area,
18 but that was one area that could happen.

19 The second one was to restripe the
20 existing parking area. There are a certain number
21 of spaces that can be compact spaces. And by taking
22 advantage of the number of compact spaces, you can
23 then achieve an additional addition. And that gave
24 us the total of a hundred, I believe it was 111
25 parking spaces was what we achieved with the

1 recommended conditions, which is that, the limited
2 to 32,053 square feet, or the alternate conditions
3 of the approval of the rezoning of the property?

4 A Yes.

5 Q And at that point you were satisfied that
6 those alternate conditions would address any
7 concerns that the City might have about parking on
8 the property at 43,916 square feet?

9 MS. HENDERSON: Objection to form.

10 THE WITNESS: I believed that that
11 addressed the, the ability to provide parking
12 commensurate with the amount of activity of the
13 site.

14 Q (BY MS. JONES) And you were comfortable
15 with the enforceability of the alternate conditions
16 at that time?

17 A I was not sure about the enforce, the, the
18 staff's ability to enforce it. That's a commitment
19 made at a staffing level which is a funding issue by
20 the mayor and city council and not something that
21 the staff could make a determination on.

22 Q Well, if in your opinion the conditions
23 were unenforceable, would you have refused to
24 recommend them?

25 A I didn't know whether the mayor and

1 council was willing to take on that responsibility
2 or not. From a technical point of view, it can be
3 done. From a practical point of view, they may
4 believe that that's not something that they want to
5 fund, which is the additional staffing that would be
6 necessary to do that kind of work. That would be
7 beyond my capabilities. That, that really is a
8 policy issue, and it's not an issue with the
9 comprehensive plan or the planning issues that I
10 deal with.

11 Q How much additional staffing do you think
12 would be required to monitor the capacity limits on
13 the building?

14 A Well, it would certainly require weekend
15 enforcement, and I currently have only four
16 officers, which does not allow me weekend
17 enforcement. So it would be probably one or two
18 additional code enforcement officers to be able to
19 cover weekend activities, which is where, where I
20 would expect that those issues would arise.

21 Q Do you know how many people are projected
22 to be in the building on the weekend?

23 A According to what was presented to us by
24 the applicant, the assembly activities occur on the
25 weekend and the classes continue on the weekend. So

1 I assumed based on that information that we might
2 well see more activity on the weekend than during
3 the week. Particularly if you assume that the
4 people who attend classes work during the day, then
5 they may well be working during the day during the
6 week and going there in the evening, on the
7 weekends.

8 And so if you combine the combination of
9 the assembly portion of it with the, the study
10 portion and the counseling portion, it appeared to,
11 to us that the greatest level of activity was
12 probably going to be on the weekend.

13 Q Are you aware of how many people currently
14 attend Sunday services at the Dunwoody center?

15 A It is not my, I don't know how many
16 currently attend the Dunwoody center. That wasn't
17 really the issue that we were looking at. The issue
18 we were looking at was at full occupancy. And I did
19 not assume that the current configuration and
20 membership was, was full occupancy of this building.
21 I assumed that this larger building was being
22 acquired because there was certainly a plan to be
23 able to expand into the rest of the building.

24 (Discussion ensued off the record.)

25 Q (BY MS. JONES) Let me show you what's been

1 previously been marked as Exhibit 8 and ask if you
2 recognize Exhibit 8. And it says Exhibit A on top
3 of it, but that's because it was attached to a
4 letter from Woody Galloway as an exhibit. But if
5 you can just thumb through and see if it looks
6 familiar to you. Are you familiar with Exhibit 8?

7 A Yes.

8 Q Is that the study of the Dunwoody and
9 Nashville sites?

10 A Yes.

11 Q Do you have any training in, in parking or
12 traffic studies?

13 A Not in the actual studies, only in, in
14 reading them and using them.

15 Q When this report was submitted, who was it
16 that analyzed the sufficiency of the report?

17 A Well, I, we look for specific information
18 to be made available in the report. It is, I'm not
19 questioning the validity of any information that's
20 provided but only on what was addressed. And you
21 may recollect that I indicated that I wanted to
22 determine how we would deal with the building at
23 full occupancy. And so any study that was done I
24 needed to see where the building was relative to
25 full occupancy so I could see how the parking

1 worked. That was part of what we struggled with as
2 we went through these studies.

3 Q Who in particular analyzed the report
4 besides yourself?

5 A It would have, it would have been Patrice
6 Ruffin and, and Linda Aberay.

7 Q Are Patrice or Linda traffic engineers?

8 A No. I wouldn't, the parking requirements
9 are not located, then are not a, something that the
10 traffic engineer does.

11 Q Do you have any reason to doubt any of the
12 factual information contained in the reports?

13 A No.

14 Q Let me show you Exhibit 9, which has
15 previously been marked as 9. Do you recognize that
16 as the Buffalo study that was presented by the
17 Church of Scientology?

18 A Yes.

19 Q Again, who analyzed this particular study?

20 A It would have been the same two staff
21 members.

22 Q Was there a written report generated that
23 critiqued either Plaintiff's 8 or 9 in terms of
24 taking the study apart and talking about each
25 element of it?

1 A No. I, it is not the, it is not the
2 responsibility of the staff to critique the report
3 but to look for the information that we requested.
4 And that was what we were doing when we reviewed
5 these. But in terms of critiquing the work that was
6 done, no. And that was, I, Kimley-Horn is perfectly
7 capable of presenting quality professional
8 information, and I have no question about that.

9 Q Well, critiquing might be a poor word.
10 Maybe just breaking the report down and parsing it.
11 Was there any kind of written, written process that
12 the staff used to digest the report?

13 A The, as I indicated, the staff was looking
14 for particular information to come out of these
15 reports. And if it was there, we used it. And if
16 it was not there, we couldn't use it. And so that's
17 what we went through and looked for. I never asked
18 nor would I suggest that our staff critique a
19 professional firm that hands its work in. We use
20 Kimley-Horn regularly on, on city work. So I'm not,
21 I'm certainly not questioning their capability in
22 doing the work, and I don't question the quality of
23 their work. In this case there were pieces that we
24 needed that weren't in the report.

25 Q Did the City disagree with -- and I'm

1 looking on Page 3 of the Buffalo report -- with the
2 last, with the statement with 81 spaces being
3 provided at the proposed Sandy Springs location, a
4 surplus of 52 spaces will be provided based on the
5 Buffalo rate. Do you disagree with that statement?

6 A Since I don't know how much of the
7 Buffalo, how close to capacity the Buffalo building
8 is, I cannot tell. That's the piece that's missing
9 that doesn't allow me to use that conclusion. If I
10 should assume that the Sandy Springs building's
11 level of occupancy will remain at whatever the
12 building in Buffalo's current occupancy is in terms
13 of proportion of the area or the level of occupancy
14 in the building, then I could accept that
15 conclusion. I don't know that.

16 (Discussion ensued off the record.)

17 Q (BY MS. JONES) Just to finish up on the
18 Buffalo report, you do not in any way disagree with
19 any of the factual statements made in this Buffalo
20 report; is that correct?

21 A I'm not, I, I wouldn't have a basis for
22 disagreeing with the facts presented.

23 MS. JONES: I think we're very close to
24 being --

25 MS. HENDERSON: You want us to take a

1 break while you consult --

2 MS. JONES: You can take a little break
3 while we consult.

4 (A recess was taken from 3:22 p.m. until
5 3:34 p.m.)

6 (Deposition concluded at 3:34 p.m.)

7 (Plaintiff's Exhibit Nos. 15 through 25
8 were retained by the reporter to be attached to
9 the deposition transcript.)

10

11

12

Nancy J. Leathers, AICP

13

14

15 Sworn to and subscribed before me,
16 this the _____ day of _____, 2010.

17

Notary Public
My commission expires:

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[illegible]

DEB PUCKETT & ASSOCIATES

1 C E R T I F I C A T E

2 G E O R G I A:

3 FULTON COUNTY:

4 I hereby certify that the foregoing
5 transcript was taken down, as stated in the
6 caption, and the questions and answers thereto
7 were reduced to typewriting under my direction;
8 that the foregoing pages 1 through 152
9 represent a true, complete and correct
10 transcript of the evidence given upon said
11 hearing; am in compliance with O.C.G.A. Section
12 9-11-28(d) and Section 15-14-37(a) and (b); and
13 I further certify that I am not of kin or
14 counsel to the parties in the case; not in the
15 regular employ of counsel for any of said
16 parties; nor am I in anywise interested in the
17 result of said case.

18 This, the 28th day of June, 2010.

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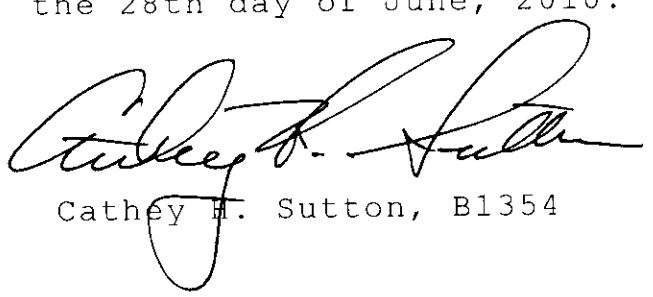
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Cathey H. Sutton, B1354

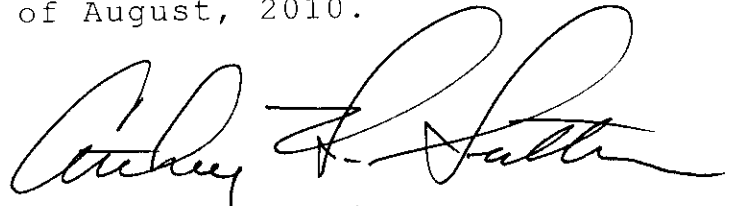
AMENDED CERTIFICATE

STATE OF GEORGIA

COUNTY OF FULTON

I hereby certify that in addition to the certification made on Page 153 of the transcript, more than the thirty (30) days provided the deponent to read and sign the original transcript has expired. Therefore, the original is being filed without signature of the witness.

This the 3rd day of August, 2010.



Cathey H. Sutton
Certified Court Reporter

DEB PUCKETT & ASSOCIATES